

ESTTA Tracking number: **ESTTA467124**

Filing date: **04/13/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92054050
Party	Defendant Unimundo Corp
Correspondence Address	MARCU FONTAIN PRESIDENT UNIMUNDO CORP 14859 MOORPARK ST, SUITE 103 SHERMAN OAKS, CA 91403 UNITED STATES marcus@unimundotv.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Marcus Fontain
Filer's e-mail	marcus@unimundotv.com
Signature	/Marcus Fontain, J.D./
Date	04/13/2012
Attachments	Motion to Dismiss Univision's First Amended Petition for Failure to state a Claim April 13, 2012.pdf ( 10 pages )(6936292 bytes )

1 UNIMUNDO CORPORATION  
14859 Moorpark Street, Suite 103  
2 Sherman Oaks, CA. 91403  
Tel: 800-516-1134  
3 Direct: 424-204-2225  
Fax: 800-516-1143  
4 [marcus@unimundotv.com](mailto:marcus@unimundotv.com)  
5 [www.unimundotv.com](http://www.unimundotv.com)

6 Registrant UNIMUNDO CORPORATION by and through  
MARCUS FONTAIN, J.D., President and CEO, in pro se

8 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
9 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

10 UNIMUNDO CORPORATION,  
11 a Florida Corporation,

12 Registrant,

13 vs.

14 UNIVISION COMMUNICATIONS, INC., a  
California Corporation,

15 Petitioner.  
16

Cancellations No. 92054050  
Registration No. 3889485

**MOTION TO DISMISS UNIVISION'S  
FIRST AMENDED PETITION TO  
CANCEL THE UNIMUNDO MARK  
FOR FAILURE TO STATE A CLAIM**

17 COMES NOW Registrant UNIMUNDO CORPORATION by and through MARCUS FONTAIN,  
18 J.D., President and CEO, in pro se and files this **MOTION TO DISMISS UNIVISION'S FIRST**  
19 **AMENDED PETITION TO CANCEL THE UNIMUNDO MARK FOR FAILURE TO STATE A**  
20 **CLAIM.**

21 **I. INTRODUCTION**

22 1. Univision filed its **First Amended Petition to Cancel** ("*First Amended Petition*") alleging that  
23 the "*Registrant Fraudulently Obtained Registration for the Mark*" and that the UNIMUNDO "*Mark is*  
24 *Likely to Dilute Petitioner's Famous Marks by Blurring and Tarnishment.*"

25 2. In its *First Amended Petition*, Univision did not state a claim upon which relief can be granted.  
26 Therefore the Board should dismiss Univision's *First Amended Petition*.  
27

1 3. The USPTO Trial and Appeal Board has authority to dismiss a complaint for failure to state a  
2 claim upon which relief can be granted if the complaint clearly demonstrates that the complainant  
3 cannot prove any set of facts that would entitle it to relief. *Hishon v. King & Spalding*. 467 U.S. 69, 73,  
4 104 S.Ct. 2229, 2223 (1984); *Doe v. Hillsboro ISD*. 81 F.3d 1395, 1401-02 (5th Cir. 1996).

5 4. Univision attempted to state causes of action for fraud, dilution, Blurring and Tarnishment but  
6 felled short of stating any claim by which relief may be granted. Federal Rule of Civil Procedure  
7 12(b)(6) and Rule 12(b). *Dawson v. Wilheit*, 735 P.2d 93 (1987), illustrates the dismissal of a suit for  
8 failure to state a claim.

9 5. Moreover, Univision **does not** have any standing to file a *First Amended Petition* for the  
10 cancellation of the UNIMUNDO Mark on at least the ground that Univision failed to timely object to the  
11 application for the UNIMUNDO Mark, in the first place.

12 6. Univision's *First Amended Petition* should also be summarily rejected because lacks sufficient  
13 facts and evidence.

14 7. Furthermore, Univision's allegations of "Fraud" by Respondent in registering the Mark also  
15 lack sufficient specificity and the evidence to sustain a cause of action and should be dismissed.

16  
17 **MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS UNIVISION'S**  
18 **FIRST AMENDED PETITION TO CANCEL FOR FAILURE TO STATE A CLAIM**

19 **GROUND FOR DISMISSAL**

20 **I. PETITIONER FAILED TO PROVIDE ANY EVIDENCE THAT UNIMUNDO**  
21 **COMMITTED FRAUD IN APPLYING FOR THE MARK UNIMUNDO**

22 8. The allegation by Univision that "*Prior to commencing this cancellation proceeding*"  
23 Petitioner checked the use of the Mark UNIMUNDO on the "*internet search engines and internet*  
24 *archives*" is insufficient to sustain a cause of action. The allegation of using the internet as an  
25 investigative agency is absurd, immaterial, irrelevant has no probative value and it is not evidence and it  
26 is highly prejudicial.



1 9. Univision also patently failed to provide in its complaint any of the results of the ostensible  
2 investigation of the “*internet search engines and internet archives.*”

3 10. It is highly “suspect” that Univision’s Learned Counsels having the ostensible evidence from  
4 the “*internet search engines and internet archives*” on the date of filing their initial in complaint it did  
5 not bring it forward at that time. Learned Counsels in a **sleight of hand** are now attempting to make  
6 their case as they go along.

7 11. Learned Counsels for good reason, were careful not to submit their own Declaration under the  
8 Penalty of perjury in support for the outlandish allegation. Because the allegation is in fact a pack of lies.

9 12. Furthermore, Univision is relying on some “*internet search engines and internet archives*”  
10 which they failed to specifically identify and those “*internet search engines and internet archives*” are  
11 not any gauge to prove “Use” of the name UNIMUNDO in Interstate Commerce on March 31, 2010, the  
12 date of the application. The new allegation is inflammatory and it is not dissimilar making a claim on  
13 “**information and belief.**” See *Meckatzer Löwenbräu Benedikt Wei KG v. White Gold, LLC*, 95  
14 USPQ2d 1185, 1187 (TTAB 2010). Therefore, the allegation should be dismissed.

15 13. Univision is also asking the Board to interpret “**Interstate Commence**” as to mean the  
16 “Internet” and/or “Internet Search Engines.” That is not how the law reads:

17  
18 “**Interstate commerce**” means trade, traffic, or transportation in the United States — (1) between  
19 a place in a State and a place outside of such State, including a place outside the U.S; (2) Between  
20 two places in a State through another State or a place outside the U.S; or (3) Between two places  
21 in a State as part of trade, traffic, or transportation originating or terminating outside the State or  
22 the U.S. **49 CFR 390.5.** According to **18 USCS § 921** the term “**Interstate or Foreign  
Commerce**” includes commerce between any place in a State and any place outside of that  
23 State, or within any possession of the United States (not including the Canal Zone) or the District  
24 of Columbia, but such term does not include commerce between places within the same State but t  
25 through any place outside of that State.

26 14. The malicious allegation of “Fraud” by Univision does **not disprove** the fact that  
27 UNIMUNDO was involved in Interstate Commerce on the date of filing **March 31, 2010** and  
28 specifically at least *two days before* on **March 28, 2010**, absent clear proof of Fraud Univision’s  
allegations are a sham. Therefore, the complaint should be dismissed.

1                   **II. PETITIONER IS IMPERMISSIBLY CONFLATING THE “UNIMUNDO” MARK**  
2                   **WITH UNIMUNDO’S “U” LOGO**

3                   15. The Mark at issue here is [only] for the word UNIMUNDO, Mark No: 3,889,485.

4                   16. Univision is impermissibly attempting to bootstrap and conflate the logo letter “U” which is  
5 not a UNIMUNDO Mark within the jurisdiction of the United States or the USPTO.

6                   17. The “U” logo representing UNIMUNDO is in fact a Registered Mark of UNIMUNDO in  
7 other countries. As such Univision has no standing here to argue issues related to the “U” logo.

8                   18. Additionally, because the “U” logo is not a U.S. Mark the Board should refuse to consider or  
9 to address the letter “U” logo.

10                   **III. UNIVISION HAD NOW FOUR CHANCES TO MAKE ITS CLAIM BUT FAILED**  
11                   **TO COME FORWARD WITH IRREFUTABLE EVIDENCE**

12                   19. Univision again has not made any effort to prove by providing clear and convincing evidence  
13 of “dilution” and/or “confusion” or even provide a valid reason why the UNIMUNDO Mark should be  
14 cancelled.

15                   20. Univision’s *First Amended* complaint is vexatious and baseless and the complaint should be  
16 dismissed with prejudice.

17                   21. The Board also should refuse to expand trademark protection as requested by Univision  
18 because clearly Univision has no standing to file any complaints against UNIMUNDO.

19                   22. Univision again fell short in proving why UNIMUNDO is causing the dilution or confusion of  
20 the name Univision and again failed to argue why Univision’s should prevail.

21                   23. Univision repeatedly fails to demonstrate the likelihood of success despite their delusional and  
22 preposterous claims of confusion and dilution of the name Univision by the name UNIMUNDO or by  
23 the “U” logo of UNIMUNDO.  
24

25                   **IV. UNIVISION HAS NO STANDING FOR FAILURE TO OBJECT**

26                   24. Univision should not be allowed to profit from their failure to object to the UNIMUNDO  
27 Trademark Registration.  
28



1 25. Univision offered no legal justification for their failure to object to the UNIMUNDO Mark.

2 **V. UNIVISION IS CONFLATING THE NAME UNIMUNDO WITH UNIVISION**

3 26. Univision and Unimundo are in very dissimilar businesses. Univision alleges:

4 “Petitioner is the leading Spanish-language media company in the United States with a  
5 diverse business portfolio that includes television, radio, film, internet, mobile media,  
6 wireless and merchandising. Petitioner has been delivering news and entertainment to  
Spanish speaking audiences throughout the United States since at least as early as the late  
1970s.” See [www.univision.com](http://www.univision.com).

7 27. UNIMUNDO on the other hand is:

8 “A free Video Sharing, Channels, Internet Broadcasting; Web Television Internet Streaming  
9 Media for imaginative and creative individuals who love sharing the videos they produce.  
10 Unimundo is a community of respectful people who enjoy sharing, collaborating on, and  
watching videos made by people just like you.” See [www.unimundotv.com](http://www.unimundotv.com).

11  
12 28. Therefore, there is no similarity whatsoever in the products from Univision Television  
13 Broadcasting and UNIMUNDO, WebTV Television video broadcasting over the internet or the identity  
14 of retail outlets, or purchasers, or consumers, or subscribers or members.

15 29. UNIMUNDO is neither seeking the Spanish Market nor is trying to pass-off its product or  
16 services for those of Univision. Quite the opposite [www.unimundotv.com](http://www.unimundotv.com) is a WebTV for music,  
17 movies and a venue for uploading of videos by its own members for WebTV consumption much like  
18 [www.vimeo.com](http://www.vimeo.com) and [www.youtube.com](http://www.youtube.com). To this end, compare [www.univision.com](http://www.univision.com). There is not one  
19 iota of similarities or any intent by UNIMUNDO to benefit whatsoever from Univision's reputation.

20 30. Univision is also impermissibly seeking to have the Board expand its current trademark  
21 protection to include the words ***“uni”*** and ***“mundo”*** neither of which belongs to Univision.

22 31. Univision is trying to bootstrap to UNIMUNDO not just the Univision name and trade  
23 practices but also its ***“Tulip”*** shaped logo.

24 32. It is absurd for Univision to argue that the name of Univision and the unique colors of its  
25 ***“Tulip”*** logo can be confused with the WebTV name of UNIMUNDO or its ***“U”*** shaped logo.  
26  
27  
28

1 33. The Board should refuse to consider these concerns, and instead focus how to evaluate similar  
2 marks under the likelihood of confusion doctrine.

3 34. The Board should also decline to address whether colors may be considered as part of a  
4 preexisting trademark in order to receive the same protection.

5 35. UNIMUNDO's logo is a "U" design which is a Trademark Registration outside the United  
6 States. The "U" logo consists of solid blue colors, dark and light and with a solid white streak tail-like  
7 design inside. See [www.unimundotv.com](http://www.unimundotv.com) and Univision's logo [www.univision.com](http://www.univision.com). See also  
8 Wikipedia and in [www.wikipedia.org/wiki/Univision](http://www.wikipedia.org/wiki/Univision) is an unclear and undefined "U."  
9

10 36. Univision has also not offered any convincing proof the UNIMUNDO "U" even looks  
11 anything like the Univision "*Tulip*" logo, which is divided in pie form with the top left quarter is *purple*  
12 with a twist to the left, a *green* square on the top right, a *red* pie on the lower left hand corner and a light  
13 *blue* pie on the lower right hand corner. These pies do not identify a letter "U." The Univision logo is  
14 then cut horizontally and vertically dividing it into four (4) color parts: **purple, green, red and blue.**

15 37. The UNIMUNDO logo and the Univision logos are also completely dissimilar by way of  
16 shape, design, color and meaning.

17 38. The trademark names of Univision and UNIMUNDO are also dissimilar.

18 39. The word "Uni" is generic and Univision's appears to allege that the two names can be  
19 confusing because both names have the word "Uni." The word "Uni" is a generic name for the word  
20 "one" or "Uno" in Latin. A Single one, Unicycle, "Uni" is also a shortened word for University, a  
21 character in 'Dungeness and Dragons (TV Series; JJ Uni Records, formally called Universal City  
22 Records, an urban-type Settlement in Kirov Oblast, Russia, the Supreme Goddess of Etruscan  
23 Mythology, Uni Global Union, an international trade union federation, a user-network interface, which  
24 is a junction from which a telecommunications services is connected between the service provider and  
25 the end user, **Uniradio**, a radio station in San Diego, CA.  
26  
27  
28



1 40. The word "**Vision**" is also quite generic; the faculty of sight; eyesight: poor vision and even  
2 as applied in trademarks, as it has been used by Pearle Vision; Plaza Vision Center; Uptown Vision;  
3 Visual Perception; Vision (Timely Comics), Visions (Magic-The gathering- a card game). **Vision** or  
4 **visions** also refer to: Visual perception, interpreting what is seen; Visual system, the sensory  
5 mechanism of eyesight; Vision (spirituality), inspirational experiences ; Hallucination, vivid conscious  
6 perception in the absence of a stimulus.

7 41. The word "**Mundo**" in Spanish or "**World**" in English; everyone, everybody, Mundo  
8 (river), river in south-eastern Spain; Mundo, California, unincorporated community in Imperial County;  
9 Mundo (album), 2002 album by Rubén Blades; *Mundo* (Hun), descendant of Attila the Hun.

10 42. Univision therefore, not entitled to claim ownership of the word "**Uni**" nor "**Mundo**."

11 43. Under current Supreme Court case law; a logo comparison cannot be made *side-by-side*. It  
12 must be made independently of each other.

13 44. UNIMUNDO's "**U**" logo is unquestionably substantially different and distinguishable from  
14 Univision, "**Tulip**" logo and the same goes for the word UNIMUNDO.

15 45. There cannot possibly be any confusion by any ordinary consumer, Spanish or not or other  
16 purchaser or visitor to the web sites that would be misled into thinking that they have gone into the  
17 world of Univision looking for UNIMUNDO and vice versa.

18 46. "**Univision**" means "**One Vision**," and "**UNIMUNDO**" means "**One World**."

19 47. The Mark UNIMUNDO not even remotely will dilute the good name of Univision.

20 **VI. UNIMUNDO AND ITS "U" LOGO ARE PROTECTED UNDER THE "LAHAM ACT"**

21 48. Univision is unjustly seeking judicial protection when none is due. Univision is claiming  
22 trademark infringement in the hopes of expanding trademark protection into a doctrine that could  
23 safeguard both the name "**Uni**" and "**Mundo**" as well as a "**U**" shaped logo while the UNIMUNDO  
24 name and logo are inherently distinctive marks that had achieved secondary meaning in the marketplace  
25 but there is no likelihood of confusion. See *Dooney & Bourke*, 454 F. 3d at 112. (Quoting: *Louis*



1 *Vuitton Malletier v. Dooney & Bourke, Inc.*, 340 F. Supp. 2d 415, 438-39 (S.D.N.Y. 2004), *affd in*  
2 *part, vacated in part*, 454 F.3d 108 (2d Cir. 2006)). See also *Raustiala & Sprigman*, *Virginia Law*  
3 *Review*, Vol. 92, p. 1687, 2006 and *UCLA School of Law Research Paper No. 06-04*, note 27, at 1699.  
4 As a further example of copyright protection limits. 17 U.S.C.A. § 102 (West 2007); *Two Pesos, Inc. v.*  
5 *Taco Cabana, Inc.*, 505 U.S. 763, 765 (1992) (quoting: *Taco Cabana Int'l, Inc. v. Two Pesos, Inc.*, 932  
6 F.2d 1113, 1117 (5th Cir. 1991), *affd*, 505 U.S. 763 (1992)). U.S.C.A. § 1125(a) (West 2007);  
7 *Knitwaves, Inc. v. Lollytogs Ltd.*, 71 F.3d 996, 1005 (2d Cir. 1995). See *Qualitex Co. v. Jacobson*  
8 *Prods. Co.*, 514 U.S. 159, 165 (1995); James E. Stewart & J. Michael Huget, *Trade Dress: Protecting a*  
9 *Valuable Asset*, 74 MICH. B.J. 56, 57 (1995).

11 49. Trademark protection is available under *Sections 32 and 43(a)* of the *Lanham Act*. Together,  
12 these sections protect both registered and unregistered trademarks from misuse or reproduction in  
13 commerce, such as the name UNIMUNDO and its “U” shaped logo neither of which are any sort of  
14 reproduction of the Univision name or its “Tulip” logo.

15 50. **Section 32** - only protects those trademarks that are registered on the Principal Register with  
16 the United States Patent and Trademark Office.

17 51. **Section 43(a)** - protects qualifying unregistered trademarks by providing that an entity's *us[e]*  
18 *in commerce [o] any word, term, name, symbol, or device, or any combination thereof... which is likely*  
19 *to cause confusion, or to cause mistake, or to deceive as to. . . origin, sponsorship, or approval of his or*  
20 *her goods, services, Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 212, 216 (2000). “We  
21 *hold that, in an action for infringement of unregistered trade dress under § 43(a) of the Lanham Act, a*  
22 *product's design is distinctive, and therefore protectable, only upon a showing of secondary meaning.”*  
23 *Id. Knitwaves, Inc.*, 71 F.3d at 1008. 15 U.S.C.A. § 1127 and 15 U.S.C.A. § 1127; 15 U.S.C.A. §§  
24 1114, 1125(a); 15 U.S.C.A. § 1125(a); *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768  
25 (1992); 15 U.S.C.A. § 1052; *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 210-11 (2000).  
26 *Id.* at 211 (quoting: to *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 851 n. 11 (1982)).  
27  
28

1 52. The test to determine whether a trademark is protected from trademark infringement under the  
2 Lanham Act is a two-part analysis: "The plaintiff must provide factual proof that: (1) either secondary  
3 meaning or inherent distinctiveness has been acquired by the trade dress [or trademark]; and (2) that the  
4 defendant's product is 'confusingly similar' to the plaintiffs product." *Gruner + Jahr USA Publ'g v.*  
5 *Meredith Corp.*, 991 F.2d 1072, 1074 (2d Cir. 1993); *Carefirst of Md., Inc. v. First Care, P.C.*, 434  
6 F.3d 263, 267 (4th Cir. 2006); *Freedom Card, Inc. v. JPMorgan Chase & Co.*, 432 F.3d 463, 470-71  
7 (3d Cir. 2005); *Davis v. Walt Disney Co.*, 430 F.3d 901, 903 (8th Cir. 2005); *Scott Fetzer Co. v. House*  
8 *of Vacuums Inc.*, 381 F.3d 477, 484-85 (5th Cir. 2004); *Sullivan v. CBS Corp.*, 385 F.3d 772, 776 (7th  
9 Cir. 2004); *Sally Beauty Co. v. Beautyco, Inc.*, 304 F.3d 964, 972 (10th Cir. 2002); *Int'l Assoc. of*  
10 *Machinists & Aerospace Workers v. Winship Green Nursing Ctr.*, 103 F.3d 196, 201 (1st Cir. 1996);  
11 *Wynn Oil Co. v. Thomas*, 839 F.2d 1183, 1186 (6th Cir. 1988); *Ambrit, Inc. v. Kraft, Inc.*, 812 F.2d  
12 1531, 1538 (11th Cir. 1986); *Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492, 495 (2d Cir. 1961).

### 14 CONCLUSION

15 WHEREFORE the *First Amended Petition* should be dismissed for failure to state a claim.

16 Additionally, the *First Amended Petition* is meritless, vexatious, filed in bad faith and with malice  
17 and it represents tortious interference with the business of UNIMUNDO.

18 The Board should summarily dismiss Univision's the *First Amended Petition* with prejudice.

19 Executed Friday, April 13, 2012.

20 Respectfully submitted,

21 

22 UNIMUNDO CORPORATION  
23 By and through MARCUS FONTAIN  
24 President and CEO, in pro se  
25 [marcus@unimundotv.com](mailto:marcus@unimundotv.com)

1 **PROOF OF SERVICE**

2 I MARCUS FONTAIN, on this date have caused to be served upon Petitioner by depositing one  
3 copy in the United States Mail, First Class Mail, postage prepaid **MOTION TO DISMISS**  
4 **UNIVISION'S FIRST AMENDED PETITION TO CANCEL THE UNIMUNDO MARK FOR**  
5 **FAILURE TO STATE A CLAIM**, addressed to:

6 **Jorge Arciniega**  
7 **Ellie Hourizadeh**  
Attorneys at Law  
8 McDermott Will & Emery LLP  
2049 Century Park East, Suite 3800  
9 Los Angeles, CA 90067  
Tel: (310) 551-9321  
10 Fax: (310) 277-4730  
11 [ehourizadeh@mwe.com](mailto:ehourizadeh@mwe.com)

12 **Trademark Trial and Appeal Board**  
13 U.S. Patent and Trademark Office  
P.O. Box 1451 Alexandria, VA 22313-1451

14 Executed Friday, April 13, 2012.

15 Respectfully submitted,

16  
17   
18 Marcus Fontain, J.D.